

REMARKS

Claims 11-27 are pending. Claims 13-20 are withdrawn. Claims 11, 12, and 21-27 are rejected.

Claims 11 and 12, and withdrawn claims 13 and 18 are amended. The claim 11 amendments correct typographical errors and clarify the photoexcited portion of the compound; other claim amendments correct typographical errors. No new matter is introduced. Applicants respectfully request reconsideration as subsequently explained.

CLAIM REJECTIONS UNDER 35 U.S.C. §112

Claims 11, 12, and 21-27 are rejected under 35 U.S.C. §112 ¶1 as not described.

Applicants respectfully disagree because a person skilled in the art can reasonably conclude that the inventors had possession of the invention as of the January 19, 2001 filing date of the parent application, of which the pending application is a Division.

To address the Examiner's statement that

the term "derived" modifies aromatic and heteroaromatic radicals and it is unclear how far the radicals can be derived and still have sufficient written description,

Applicants attach Dr. Buolamwini's Third Declaration under 37 C.F.R. §1.132. This Declaration clarifies how a person skilled in this art can reasonably conclude the inventors had possession of the invention, and thus that the claims are sufficiently described.

Regarding the Examiner's statement that the various receptor binding compound groups (3) - (7) are

directed to functional limitations with no structural description which might lead one of skill in the art to believe Applicant's were in possession of the genus instantly claimed,

Applicants cite Dr. Buolamwini's Second Declaration, dated June 29, 2009, and of-record in this application. In this Second Declaration, Dr. Buolamwini stated at pp. 2-3, with emphasis added:

In my opinion, Applicants' description of "bombesin (or other) receptor binding molecules" allows me to quickly envisage compounds that would fit the definition of E in the claimed formula.

While Dr. Buolamwini's additional analysis in his June 29, 2009 Declaration provided details for bombesin receptor-binding compounds, it was exemplary only and was not limited in applicability to only the bombesin receptor binding compounds. Nevertheless, for completeness, Applicants submit a third Declaration under 37 C.F.R. §1.132 specifically demonstrating how and where information on the other receptor binding compounds was known at the time the application was filed, and how and why each of somatostatin receptor binding compounds, ST receptor binding compounds, neurotensin receptor binding compounds, carbohydrate receptor binding compounds, steroid receptor binding compounds, and CCK receptor binding compounds are described.

For at least these reasons, Applicants assert that claims 11, 12, and 21-27 are described and request withdrawal of the rejection.

Applicants initially requested, in their October 23, 2008 Amendment, and then again requested, in their June 29, 2009 Amendment, the specificity and supporting affidavit, as permitted under 37 C.F.R.

§1.104(d)(2), refuting Declarant's statements should the Examiner not find it persuasive. The Examiner has not found their Declarant's statements persuasive. Applicants, with this submission, have now submitted three Declarations; the Examiner has not provided his refuting affidavit. Applicants respectfully reiterate their request.

CLAIM REJECTIONS UNDER 35 U.S.C. §103

Claims 11, 12, and 21-27 are rejected under 35 U.S.C. §103(a) as obvious over Sykes U.S. Patent No. 6,313,274 in view of Pinney.

Examiner notes that while Sykes et al differentiates from Noujaim based on the photoactivation of the antibody rather than the aromatic azido derivative, such a limitation is not in the instant claims. The instant claims are simply directed to phototherapy, generally, which could include the photoactivation of either component.

Amended claim 11 recites that "exposing the target tissues to light of wavelength between 300 and 1200 nm" "photoexcite[s] the Ar-X-N₃ portion of the compound to treat the target tissues." Support is found at least on p. 6 lines 5-10 and p. 9, lines 3-7 of the application:

Thus, there is a need to develop effective phototherapeutic agents that operate via the Type 1 mechanism. Phototherapeutic efficacy can be further enhanced if the excited state photosensitizers can generate reactive intermediates such as free radicals, nitrenes, carbenes, and the like, which have much longer lifetimes than the excited chromophore and have been shown to cause considerable cell injury.

...

In the process outlined above [a method of performing a phototherapeutic procedure using the organic azide compounds of the present invention], the photoexcitation of the aromatic chromophore effects a rapid intramolecular energy transfer to the azido group, resulting in bond rupture and production of nitrene and nitrogen gas. The nitrogen that is released is in a vibrationally excited state, which may cause additional cellular injury.

thus introducing no new matter. Sykes in view of Pinney does not teach this method where photoexcitation of the aromatic chromophore effects energy transfer to the azido group resulting in bond rupture. Applicants thus respectfully assert that claims 11, 12, and 21-27 are not obvious, and request withdrawal of the rejection.

CONCLUSION

The application is believed to be in condition for allowance. The response extension fee is simultaneously being paid by electronic funds transfer. If other fees are deemed necessary, the Office is authorized to charge them to Deposit Account No. 20-0809.

The Examiner is invited to contact Applicants' undersigned representative with questions.

Respectfully submitted,

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